

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

ELIZABETH SINES, *et al.*,

*Plaintiffs,*

v.

JASON KESSLER, *et al.*,

*Defendants.*

CASE NO. 3:17-cv-00072

ORDER

JUDGE NORMAN K. MOON

Before the Court is Plaintiffs’ Motion *in Limine* requesting that the Court “deem authentic certain photographs and videos depicting Defendant Robert ‘Azzmador’ Ray.” Dkt. 1149. The Court noticed this motion *in limine* for a hearing on October 18, 2021. No party has filed an opposition to the motion within the time afforded by the Court’s pretrial order. *See* Dkt. 991 at 2. At argument on October 18, the Court raised the matter again and no party disputed that the motion was uncontested. *See* Dkt. 1259 at 31 (Tr. of Oct. 18, 2021 Hr’g).

Rule 901(a) of the Federal Rules of Evidence states that, “[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). Therefore, under this Rule, “[a]uthenticity is a requirement of admissibility,” and “[t]he authenticity of a document simply refers to whether a document is in fact what it is purported to be.” *United States v. Habteyes*, 356 F. Supp. 3d 573, 581 (E.D. Va. 2018). The Fourth Circuit has explained that “[t]he burden to authenticate under Rule 901 is not high—only a *prima facie* showing is required.” *United States v. Vidacak*, 553 F.3d 344, 349 (4th Cir. 2009). That is because “[t]he factual determination of whether evidence is that which the proponent claims is

ultimately reserved for the jury,” and the “district court’s role is to serve as gatekeeper in assessing whether the proponent has offered a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.” *Id.* (citations omitted).

Upon consideration of Plaintiffs’ unopposed motion, the Court concludes that Plaintiffs have amply substantiated their request as proponent of the specifically identified exhibits, *see* Dkts. 2071, 2738, 2761, 2805, 2810, 2820, 2880, 3244, and portions of 1991 (7:30-8:43), that they have a satisfactory foundation upon which a jury could reasonably find the evidence is authentic, but, of course, whether this evidence is what Plaintiffs claim it is will ultimately be a question reserved for the jury.

For these reasons, Plaintiffs’ motion is **GRANTED**. Dkt. 1149. The Court will **deem authenticated** Dkts. 2071, 2738, 2761, 2805, 2810, 2820, 2880, 3244, and portions of 1991 (7:30-8:43), subject to rebuttal by any Defendant, for purposes of Rule 901 of the Federal Rules of Evidence.

It is so **ORDERED**.

The Clerk of the Court is directed to send a certified copy of this Order to the parties.

Entered this 22nd day of October, 2021.

  
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NORMAN K. MOON  
SENIOR UNITED STATES DISTRICT JUDGE